

1 E. MARTIN ESTRADA  
United States Attorney  
2 DAVID M. HARRIS  
Assistant United States Attorney  
3 Chief, Civil Division  
JOANNE S. OSINOFF  
4 Assistant United States Attorney  
Chief, Complex and Defensive Litigation Section  
5 SARAH L. CRONIN (Cal. Bar No. 252624)  
Assistant United States Attorney  
6 Federal Building, Suite 7516  
300 North Los Angeles Street  
7 Los Angeles, California 90012  
Telephone: (213) 894-3986  
8 Facsimile: (213) 894-7819  
E-mail: Sarah.Cronin@usdoj.gov  
9

10 Attorneys for Defendant  
Department of Homeland Security

11 UNITED STATES DISTRICT COURT  
12 FOR THE CENTRAL DISTRICT OF CALIFORNIA

13 PETER POPOV,  
14 Plaintiff,  
15 v.  
16 DEPARTMENT OF HOMELAND  
17 SECURITY,  
18 Defendant.

Case No. 2:23-cv-9001-AB-AJR

**DEFENDANT'S NOTICE OF MOTION  
AND MOTION TO DISMISS OR, IN  
THE ALTERNATIVE, MOTION FOR  
SUMMARY JUDGMENT;  
MEMORANDUM OF POINTS AND  
AUTHORITIES; DECLARATION OF  
SARAH CRONIN; AND  
DECLARATION OF JARROD  
PANTER**

Hearing Date: May 17, 2024  
Time: 10:00 a.m.  
Ctrm.: 7B

Hon. Andre Birotte Jr.  
United States District Judge

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**NOTICE OF MOTION AND MOTION TO DISMISS OR, IN THE  
ALTERNATIVE, MOTION FOR SUMMARY JUDGMENT**

PLEASE TAKE NOTICE that, on May 17, 2024, at 10:00 a.m., or as soon thereafter as they may be heard, Defendant Department of Homeland Security, by and through the United States Attorney for the Central District of California, will, and hereby does, move this Court for an order dismissing the Complaint with prejudice. This motion will be made in the First Street Federal Courthouse before the Honorable André Birotte Jr., United States District Judge, located at 350 W. 1st Street, Los Angeles, CA 90012, Courtroom 7B.

Defendant respectfully moves this Court to dismiss the Complaint under Federal Rule of Civil Procedure 12(b)(1), on the ground that there is a lack of subject-matter jurisdiction because Plaintiff Peter Popov (“Plaintiff”) has failed to show that Defendant has improperly withheld agency records. Alternatively, Defendant respectfully moves this Court for summary judgment pursuant to Federal Rule of Civil Procedure 56, on the grounds that there is no genuine dispute of material fact and Defendant is entitled to judgment on the entire case as a matter of law.

This motion is made upon this Notice, the attached Memorandum of Points and Authorities, the Declaration of Sarah Cronin, the Declaration of Jarrod Panter, and all pleadings, records, and other documents on file with the Court in this action, and upon such oral argument as may be presented at the hearing of this motion.

This motion is made following the conference of counsel pursuant to Local Rule 7-3 which was held on February 2, 2024. *See* attached Declaration of Sarah L. Cronin, ¶ 3.

1 Dated: February 20, 2024

Respectfully submitted,

2 E. MARTIN ESTRADA

United States Attorney

3 DAVID M. HARRIS

Assistant United States Attorney

4 Chief, Civil Division

5 JOANNE S. OSINOFF

Assistant United States Attorney

Chief, Complex and Defensive Litigation Section

6 /s/ Sarah L. Cronin

7 Sarah L. Cronin

Assistant United States Attorney

8 Attorneys for Defendant Department of Homeland  
9 Security

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

In this action under the Freedom of Information Act (“FOIA”), 5 U.S.C. §552, *et seq.*, Plaintiff Peter Popov (“Plaintiff”) seeks the immigration records of his former business partner, Hrabar Todorov, without Mr. Todorov’s consent. Plaintiff claims that Mr. Todorov “committed numerous frauds and felonies” which had gone “undetected by DHS” during Mr. Todorov’s U.S. citizenship application process. The immigration records are located in Mr. Todorov’s Alien File (“A-file”) which is in the custody of the U.S. Citizenship and Immigration Services (“USCIS”).

Defendant Department of Homeland Security (“Defendant” or “DHS”) maintains that USCIS properly denied Plaintiff’s FOIA request as it seeks personal identifying information about an individual that is subject to protection under FOIA Exemption 6. *See* 5 U.S.C. §552(b)(6). The release of such information would constitute a clearly unwarranted invasion of Mr. Todorov’s personal privacy. Therefore, Defendant is not improperly withholding any documents and the Complaint should be dismissed with prejudice for a lack of subject matter jurisdiction under Federal Rule of Civil Procedure 12(b)(1), or, in the alternative, Defendant is entitled to summary judgment with respect to all claims asserted by Plaintiff in this action.

**II. STATEMENT OF FACTS**

On August 1, 2022, third-party individual Hrabar Todorov filed a lawsuit in Los Angeles Superior Court against Plaintiff alleging breach of contract, among other claims. (*See* attached Declaration of Jarrod Panter (“Panter Decl.”), Ex. E.)

On June 22, 2023, Plaintiff submitted a FOIA request to USCIS through a form G-639, seeking the immigration file of Mr. Todorov. (Statement of Uncontroverted Fact (“SUF”) 1.) Specifically, Plaintiff’s request stated that he was “investigating the gross and criminal negligence committed by DHS in granting legal status and later US Citizenship of the subject of record [*i.e.*, Mr. Todorov] who has committed numerous frauds and felonies on the face of his applications.” (SUF 2.) Plaintiff’s FOIA request

1 was assigned case number NRC2023193494. (SUF 3)

2 After reviewing Plaintiff's FOIA request, the National Records Center ("NRC")  
3 personnel determined that based on the information being sought, any records in  
4 USCIS's control that were responsive to the request and subject to the FOIA, to the  
5 extent that they exist, would be located in an A-File pertaining to Mr. Todorov.<sup>1</sup> (SUF  
6 4) The NRC based this determination on the fact that the A-File is the official record  
7 where all immigration transactions involving a particular individual are documented  
8 and stored as they pass through the immigration and inspection process. (SUF 6)

9 USCIS recognizes a significant privacy interest in an individual's immigration  
10 information. (SUF 7.) Thus, there are procedures in place to allow for disclosure of such  
11 information only under certain criteria. (SUF 8.) In order to obtain records pertaining to  
12 a third-party individual, a requester must provide written authorization and a signature  
13 from the third-party individual permitting disclosure of the records to the requester or  
14 otherwise demonstrate a cognizable public interest in the records that outweighs the  
15 individual's privacy interest. (SUF 8.)

16 In this case, Plaintiff did not provide written authorization from Mr. Todorov  
17 permitting the disclosure of records from his A-File to the Plaintiff. (SUF 9.)

18 Additionally, the NRC determined that the Plaintiff failed to set forth a cognizable  
19 public interest in the records that outweighed Mr. Todorov's significant privacy interest  
20 in his immigration records. (SUF 10.) While Plaintiff claimed that the release of Mr.  
21 Todorov's immigration records "will shed a direct light on DHS' failure to perform its  
22 statutory duties," the NRC determined that, even if the allegations raised by the Plaintiff  
23 were true, the isolated case fails to reach the threshold of constituting systematic or gross  
24 negligence by USCIS, nor does it shed light on the agency's operations. (SUF 11.)  
25 Accordingly, the NRC determined that releasing this information would not be  
26

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27 <sup>1</sup> An A-file is the official file for all immigration records created or consolidated by the  
28 government. (SUF 5; *see also* 82 Fed. Reg. 43556 (September 18, 2017).)



1 appropriate under the FOIA. (SUF 12.)

2 In a letter dated July 1, 2023, the NRC informed Plaintiff that the requested  
3 information, to the extent that it exists, must be withheld in full pursuant to 5 U.S.C. §  
4 552(b)(6) of the FOIA. (SUF 13.)

5 In a letter dated August 29, 2023, Plaintiff administratively appealed the NRC's  
6 determination. (SUF 14.) Specifically, Plaintiff challenged USCIS's determination not to  
7 release information regarding Mr. Todorov and repeated the same public interest claims  
8 raised in the FOIA request. (SUF 14.)

9 The USCIS Appeals Office concurred with the NRC's determination, concluding  
10 that the Plaintiff's omission of written authorization from the subject of the records  
11 precludes the disclosure of A-file records. (SUF 15.) Furthermore, the Appeals Office  
12 determined that the Plaintiff did not substantiate a cognizable public interest under the  
13 FOIA of sufficient magnitude to supersede the inherent personal privacy interests of Mr.  
14 Todorov. (SUF 15.) The Appeals office also determined that the Plaintiff failed to  
15 establish the relevance of the information sought to public understanding, accountability,  
16 or scrutiny of government activities. (SUF 15.)

17 By letter dated September 6, 2023, the USCIS Appeals Office informed the  
18 Plaintiff that it had decided to close his case with no further action. (SUF 16.)

19 On October 23, 2023, Plaintiff filed his Complaint in the instant action. (Dkt. 1.)

### 20 **III. STANDARD OF REVIEW IN FOIA CASES**

21 Under the FOIA, an agency's decision to withhold information from a FOIA  
22 requester is subject to *de novo* review by the courts. 5 U.S.C. § 552(a)(4)(B). The agency  
23 bears the burden of justifying the nondisclosure of documents and establishing that  
24 particular documents are exempt from disclosure. *Lane v. Dept. of Interior*, 523 F.3d  
25 1128, 1135-36 (9th Cir. 2008); *Citizens Comm'n on Human Rights v. FDA*, 45 F.3d  
26 1325, 1328 (9th Cir. 1995). To meet its burden, the agency may rely on declarations and  
27 other evidence which show that the documents are exempt from disclosure. *Lane*, 523  
28 F.3d at 1135-36. Courts "accord substantial weight to an agency's declarations regarding

1 the application of a FOIA exemption” where the justifications for nondisclosure are not  
2 controverted by contrary evidence in the record or by evidence of agency bad faith.  
3 *Shannahan v. IRS*, 672 F.3d 1142, 1148 (9th Cir. 2012).

4 The FOIA’s statutory language makes federal jurisdiction dependent upon a  
5 showing that an agency has (1) “improperly,” (2) “withheld,” (3) “agency records.”  
6 *Spurlock v. FBI*, 69 F.3d 1010, 1015 (9th Cir. 1995) (*quoting Kissinger v. Reporters*  
7 *Comm. for Freedom of Press*, 445 U.S. 136, 150n (1980)). “Unless each of these criteria  
8 is met, a district court lacks jurisdiction to devise remedies to force an agency to comply  
9 with the FOIA’s disclosure requirements.” *Id.* (*quoting Dep’t of Justice v. Tax Analysts*,  
10 492 U.S. 136, 142 (1989)). Thus, the Court only has jurisdiction over agency records or  
11 documents that are improperly withheld.

12 A court may dismiss a complaint for lack of subject matter jurisdiction under Rule  
13 12(b)(1). Plaintiff has the burden of showing that jurisdiction is proper. *Thornhill*  
14 *Publishing Co. v. General Tel. & Electronics Corp.*, 594 F.2d 730 (9th Cir. 1979). A  
15 lack of jurisdiction is presumed until the Plaintiff proves otherwise. *Kokkonen v.*  
16 *Guardian Life Ins. Co. of America*, 511 U.S. 375, 377 (1994); *see Lawrence v. Comm’r*,  
17 2000 WL 637351, at \*3 (C.D. Cal. Mar. 2, 2000) (granting Rule 12(b)(1) motion to  
18 dismiss FOIA complaint with prejudice based on finding that IRS had not improperly  
19 withheld agency records).

20 Alternatively, because the facts are rarely in dispute in FOIA cases, they are often  
21 decided on motions for summary judgment. *See Yonemoto v. Department of Veterans*  
22 *Affairs*, 686 F.3d 681, 688 (9th Cir. 2012); *Lane*, 523 F.3d at 1134. A defendant is  
23 entitled to summary judgment in a FOIA case when it demonstrates that no material facts  
24 are in dispute, that it has conducted an adequate search for responsive records, and that  
25 each responsive record that it has located has either been produced or is exempt from  
26 disclosure. *Weisberg v. U.S. Dep’t of Justice*, 627 F.2d 365, 368 (D.C. Cir. 1980); *see*  
27 *also Zemansky v. U.S. EPA*, 767 F.2d 569, 571 (9th Cir. 1985); *Kissinger*, 445 U.S. at  
28 150. Summary judgment may be granted solely on the basis of agency affidavits or

1 declarations if they contain reasonably detailed descriptions of the documents and allege  
2 facts sufficient to establish an exemption. *See Lane*, 523 F.3d at 1136, *citing Lewis v.*  
3 *IRS*, 823 F.2d 375, 378 (9th Cir. 1987) (“district court need look no further”).

#### 4 **IV. ARGUMENT**

##### 5 **A. Burton v. Wolf is Instructive**

6 The Ninth Circuit’s decision in *Burton v. Wolf* – while unpublished – is instructive  
7 here because it dealt with a similar situation. 803 Fed.Appx. 120, 121 (2020). In *Burton*,  
8 the plaintiff sought records from immigration proceedings involving his estranged wife  
9 without her consent. *Id.* Plaintiff argued that in light of the dismissal of the civil and  
10 criminal cases against him for domestic abuse of his estranged wife, disclosure of the  
11 records would “shed light” on whether the government acted properly on his estranged  
12 wife’s immigration petition which may have been based on her allegations that she was  
13 being abused by the plaintiff. *Id.* at 121-22.

14 The Ninth Circuit affirmed the district court’s holding that the records contained  
15 in a person’s A-File are exempt from disclosure under FOIA’s Exemption 6 as records  
16 similar to “personnel and medical files” that implicate nontrivial privacy interests. *Id.* at  
17 121 (citing *U.S. Dep’t of State v. Wash. Post Co.*, 456 U.S. 595, 598 (1982); *U.S. Dep’t*  
18 *of State v. Ray*, 502 U.S. 164, 175–76 (1991); *Kowack v. U.S. Forest Serv.*, 766 F.3d  
19 1130, 1133 (9th Cir. 2014)). The Ninth Circuit then looked to whether the plaintiff had  
20 established that the disclosure of the information would advance a significant public  
21 interest. *Id.* at 121. The Ninth Circuit rejected the plaintiff’s argument that disclosing his  
22 estranged wife’s A-File would advance a significant public interest, reasoning that the  
23 disclosure of personal information in an isolated case would not constitute a significant  
24 advancement of the public’s understanding of DHS’s performance of its statutory duties.  
25 *Id.* at 122. Further, the Ninth Circuit pointed out that the plaintiff had not provided any  
26 evidence of government impropriety in connection with the processing of the plaintiff’s  
27 estranged wife’s immigration petition. *Id.*

28 Likewise, even if all of Plaintiff’s allegations regarding Mr. Todorov as true, the

1 disclosure of Mr. Todorov's A-File, an isolated case, would not constitute a significant  
2 advancement of the public's understanding of USCIS's performance of its statutory  
3 duties. Accordingly, as in *Burton*, Plaintiff has failed to demonstrate a significant public  
4 interest that would supersede the personal privacy interests of Mr. Todorov in his A-File.

5 **B. USCIS Properly Withheld Information From the A-File of a Third-**  
6 **Party Individual**

7 **1. Nature of the Records Withheld by USCIS**

8 An A-File is the official record system that contains information regarding  
9 transactions involving an individual as they pass through the U.S. immigration and  
10 inspection process. (SUF 6.) USCIS is the custodian of all A-Files and the system  
11 manager for the Alien File/Central Index System. (SUF 5, 6.) Here, Plaintiff's FOIA  
12 request clearly sought information contained in the immigration file of Mr. Todorov,  
13 without Mr. Todorov's permission. He specifically requested "[a]ll supporting  
14 documents and notes accompanying" Mr. Todorov's application for naturalization and  
15 various petitions allegedly made by Mr. Todorov. (SUF 1.) After reviewing Plaintiff's  
16 request, USCIS determined that based on the information being sought, any responsive  
17 records in its control would be located in Mr. Todorov's A-File. (SUF 4.)

18 **2. FOIA and USCIS Regulations Prohibit Release of the**  
19 **Information to Plaintiff**

20 Under the FOIA, USCIS is prohibited from releasing Mr. Todorov's information  
21 without his written consent. (SUF 8.) USCIS is also prohibited from releasing  
22 information from Mr. Todorov's A-file under DHS regulations which set forth the rules  
23 and procedures that must be followed by persons requesting DHS records. *See* 6 C.F.R. §  
24 5.3(a) ("If you are making a request for records about another individual, either a written  
25 authorization signed by that individual permitting disclosure of those records to you or  
26 proof that that individual is deceased (for example, a copy of a death certificate or an  
27 obituary) must be submitted.") and 6 C.F.R. § 5.21(f) ("If you are making a request for  
28 records concerning an individual on behalf of that individual, you must provide a

1 statement from the individual verifying the identity of the individual as provided in  
2 paragraph (d) of this section. You must also provide a statement from the individual  
3 certifying the individual’s agreement that records concerning the individual may be  
4 released to you.”).

5 USCIS advised Plaintiff that his request was deficient because it failed to: (1)  
6 contain a signed, written authorization from Mr. Todorov permitting disclosure of the  
7 records to Plaintiff, or (2) establish a clear demonstration that the public interest in  
8 disclosure outweighed Mr. Todorov’s personal privacy interest and that significant  
9 public benefit would result from the disclosure of the requested records. (SUF 13, 15,  
10 16.) Accordingly, USCIS properly denied Plaintiff’s FOIA request. (*Id.*)

### 11 **3. USCIS Properly Invoked FOIA Exemption 6**

12 FOIA Exemption 6 permits the government to withhold “personnel and medical  
13 files and similar files the disclosure of which would constitute a clearly unwarranted  
14 invasion of personal privacy.” 5 U.S.C. § 552(b)(6). Application of Exemption 6 requires  
15 a two-step inquiry. *See Multi Ag Media v. United States Dep’t of Agriculture*, 515 F.3d  
16 1224, 1228 (D.C. Cir. 2008). First, the requested record must be deemed a personnel file,  
17 a medical file, or a similar file. *Id.* Second, the Court considers whether disclosure  
18 “would constitute a clearly unwarranted invasion of personal privacy.” *Id.* (*quoting* 5  
19 U.S.C. § 552(b)(6)).

20 The first step has been construed broadly to cover essentially all information  
21 sought from government records that “appl[y] to a particular individual.” *United States*  
22 *Dep’t of State v. Washington Post Co.*, 456 U.S. 595, 602 (1982) (explaining that  
23 Exemption 6 was “intended to cover detailed Government records on an individual  
24 which can be identified as applying to that individual.”) (*quoting* H.R. Rep. No. 89-  
25 1497, at 11 (1966)); *see also Forest Serv. Employees for Env’tl. Ethics v. U.S. Forest*  
26 *Serv.*, 524 F.3d 1021, 1024 (9th Cir. 2008) (stating that the threshold test of Exemption 6  
27 is satisfied when government records contain information applying to particular  
28 individuals); *see also Burton*, 803 Fed.Appx. (unpub.) at 121 (“DHS correctly concluded

1 that the records contained in the A-File are exempted from disclosure as records similar  
2 to “personnel and medical files.”). Because A-Files and records of immigration court and  
3 bond proceedings are government records that contain information that “applies to a  
4 particular individual” and could result in “injury and embarrassment” if disclosed, the  
5 first step of the inquiry is satisfied. *Dep’t of State v. Washington Post*, 456 U.S. at 602.

6 At the second step, the Court must balance “the privacy interest that would be  
7 compromised by disclosure against any public interest in the requested information.”  
8 *Multi Ag Media*, 515 F.3d at 1228. The Court must first examine whether disclosure of  
9 the information would compromise a substantial privacy interest, although the word  
10 substantial “means less than it might seem” and encompasses “anything greater than a *de*  
11 *minimis* privacy interest.” *Id.* at 1229–30.

12 There is a significant privacy interest in any information that can be used to  
13 identify an individual and/or their legal status, including an individual’s immigration  
14 information. The Supreme Court has held that the privacy interests recognized by FOIA  
15 Exemption 6 belong “to the individual, not the agency holding the information.” *DOJ v.*  
16 *Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 763-65 (1989). Here, Plaintiff  
17 requested “[a]ll supporting documents and notes accompanying” Mr. Todorov’s  
18 application for naturalization and various immigration petitions allegedly made by Mr.  
19 Todorov. (SUF 1.) Essentially, he seeks access to information contained in any forms  
20 that Mr. Todorov submitted in relation to his immigration status or that may have been  
21 discussed during immigration proceedings. Release of such information would constitute  
22 a clearly unwarranted invasion of Mr. Todorov’s personal privacy. Accordingly, the  
23 privacy interest at stake is substantial, and is subject to the protection of Exemption 6.

24 Having established the privacy interest at stake, the Court must weigh protection  
25 of that interest through nondisclosure “against the public interest in the release of the  
26 records.” *Multi Ag Media*, 515 F.3d at 1230 (*quoting Nat’l Ass’n of Retired Fed.*  
27 *Employees v. Horner* (“NARFE”), 879 F.2d 873, 874 (D.C. Cir. 1989)). If no public  
28 interest is found, then withholding the information is proper, even if the privacy interest



1 is only modest. *See, e.g., NARFE*, 879 F.2d at 879 (“[S]omething, even a modest privacy  
2 interest, outweighs nothing every time.”).

3 Here, Defendant found that Plaintiff’s articulated public interest was not a valid  
4 one, *i.e.*, “shed[ding] a direct light on DHS’ failure to perform its statutory duties” in  
5 detecting the allegedly disqualifying activities of Mr. Todorov, because the release of an  
6 isolated individual’s immigration records would not shed light on the agency’s  
7 operations. (SUF 11.) Plaintiff did not disclose that he had been sued by Mr. Todorov  
8 prior to making his FOIA request for Mr. Todorov’s immigration records. (Panter Decl.,  
9 *Id.*, ¶9, fn. 3.) However, more importantly, Plaintiff’s personal interest in Mr. Todorov’s  
10 immigration records in connection with a separate lawsuit is not a cognizable public  
11 interest under the FOIA.

12 Accordingly, Defendant properly withheld the requested information pursuant to  
13 Exemption 6 of the FOIA.

## 14 **V. CONCLUSION**

15 For the reasons set forth above, Defendant respectfully requests that the Court  
16 grant its Rule 12(b)(1) motion to dismiss or, in the alternative, motion for summary  
17 judgment with respect to Plaintiff’s FOIA request. USCIS properly invoked agency  
18 regulations and Exemption 6 in denying Plaintiff’s FOIA request and Plaintiff cannot  
19 demonstrate a public interest in the disclosure of information contained in his ex-  
20 business partner’s immigration file sufficient to overcome Mr. Todorov’s privacy  
21 interests. Absent a public interest in disclosure, Mr. Todorov’s privacy interests must  
22 prevail and prevent disclosure.

1 Dated: February 20, 2024

Respectfully submitted,

2 E. MARTIN ESTRADA

United States Attorney

3 DAVID M. HARRIS

Assistant United States Attorney

4 Chief, Civil Division

JOANNE S. OSINOFF

5 Assistant United States Attorney

Chief, Complex and Defensive Litigation Section

6  
7 /s/ Sarah L. Cronin

Sarah L. Cronin

8 Assistant United States Attorney

9 Attorneys for Defendant

10 Department of Homeland Security

11  
12 **Certificate of Compliance under L.R. 11-6.2**

13 The undersigned, counsel of record for Defendant, certifies that this brief  
14 contains 2,944 words, which complies with the word limit of L.R. 11-6.1.  
15

16 Dated: February 20, 2024

/s/ Sarah L. Cronin

17 Sarah L. Cronin

Assistant United States Attorney

18 Attorneys for Defendant

19 Department of Homeland Security  
20  
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